

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO. 71 OF 2003

Jabir Habib Jagrala. .. Petitioner.

vs.

M/s. Cafe Marol

& Ors. .. Respondents.

Mr. Atul G. Damle for petitioner.

Mr. D. R. Shah for Respondents 2, 3 & 4.

Coram: J.N. PATEL, J.

Date: 26th July, 2006.

P.C.

1. Heard.

2. The petitioner has approached this Court as the Small Causes Court has vacated the order, which according to the petitioner, was in the form of protection that they should not be dispossessed from the premises without following due process of law.

3. Mr. Singh, the learned counsel for the respondents, who are the partners holding 80% of the shares in the partnership firm M/s. Cafe Marol, makes

a statement that the respondents will not dispossess the petitioner without following due process of law but as the suit has already been filed in the matter but this should not be an impediment in the way of the respondents to apply to the Court to appoint them as agent of the Court Receiver in lieu of the petitioner who has no right whatsoever to continue to run the business of the partnership firm M/s. Cafe Marol.

4. This Court makes it clear that the respondents can very well take recourse to the remedy available to them including that of moving the Court which is seized of the matter for seeking appointment as agent of the Court Receiver by removing the petitioner. Needless to say that such an application would be decided by the Court after hearing the parties in accordance with law and which in no manner prejudice the case of either of the parties. More so, for the reason that it is pointed out by the respondents that the petitioner got into the premises through fraudulent means in collusion with one of the partners and factually speaking the petitioner was an employee of the firm. Therefore, the petition stands disposed of with no order as to costs.

(J.N. Patel, J.)